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28 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

1 A.B.O. Comix, Kenneth Roberts, Zachary
2 Greenberg, Ruben Gonzalez-Magallanes,
3 Domingo Aguilar, Kevin Prasad, Malti Prasad,
4 and Wumi Oladipo,

5 Plaintiffs,

6 v.

7 County of San Mateo and Christina Corpus, in
8 her official capacity as Sheriff of San Mateo
9 County,

10 Defendants.

11 Case No.: 3:23-CV-1865-JSC

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15 **REPLY IN FURTHER SUPPORT OF**
PLAINTIFFS' MOTION TO REMAND

16
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18
19 Complaint Filed: March 9, 2023

20
21 Hearing: June 29, 2023

22 Time: 10:00 AM

23 Courtroom: 8

24 Judge: Hon. Jacqueline Scott Corley

1 **I. INTRODUCTION**

2 Plaintiffs filed this lawsuit in state court so that a California court would decide their novel
 3 California constitutional claims. After Defendants removed this case, Plaintiffs sought to return to
 4 state court by filing an Amended Complaint that omitted their federal claims. Plaintiffs did not
 5 make this choice lightly: Plaintiffs believe that their federal claims, including their statutory claim
 6 under the Religious Land Use and Institutionalized Persons Act, are meritorious, but nevertheless
 7 decided that they would not litigate those claims. Nor did Plaintiffs delay; they removed their
 8 federal claims as soon as they were able to consult with counsel (using the slow means available
 9 to incarcerated individuals). Despite Defendants' protestations, the Ninth Circuit has recognized
 10 that there is "nothing manipulative about" this type of "straight-forward tactical decision," *Baddie*
 11 *v. Berkeley Farms, Inc.*, 64 F.3d 487, 491 (9th Cir. 1995), and nothing Defendants have argued
 12 alters the fact that Plaintiffs' state-law claims are best heard in state court. Unsurprisingly, federal
 13 courts regularly remand cases in this situation without dismissing the plaintiffs' federal claims
 14 with prejudice. Respectfully, this Court should do the same.

15 **II. ARGUMENT**

16 **A. The only claims remaining are state-law claims, and they belong in state
 17 court.**

18 The Amended Complaint no longer raises any federal claims, and Plaintiffs have made
 19 clear that they will not assert these claims again in this suit. *See* Gonzalez Decl. ¶¶ 6–8; DeVeaux
 20 Decl. ¶¶ 4, 6, ECF No. 31-1. There is no question that remand is appropriate—and common—
 21 under 28 U.S.C. § 1367(c) in such a case. *See, e.g.*, *M.H. v. Montessori Sch. at Wash. Ave., Inc.*,
 22 No. 3:21-cv-04558-WHO, 2022 WL 1516560, at *3 (N.D. Cal. May 13, 2022); *Beverly v. Newport*
 23 *Beach Police Dep't*, No. 8:21-cv-1277-JGB (SP), 2021 WL 4507476, at *2, *4 (C.D. Cal. Sept. 2,
 24 2021), *R&R adopted*, 2021 WL 4502721 (C.D. Cal. Oct. 1, 2021); *Kisaka v. Univ. of S. Cal. USC*,
 25 No. CV 17-01746 BRO (MRWx), 2017 WL 1960636, at *5–6 (C.D. Cal. May 11, 2017); *Carias*
 26 *v. Lenox Fin. Mortg. Corp.*, No. 07-0083 SC, 2008 WL 618917, at *2 (N.D. Cal. Mar. 5, 2008);
 27 *see also* § 1367(c)(2). Nor is there any question that the values of economy, convenience, fairness,
 28 and comity demonstrate that the case should proceed in state court. Plaintiffs explained in their

1 motion, and Defendants do not contest, that these interests are best served by allowing state courts
 2 to decide state claims, especially when they raise novel legal questions and there has been no
 3 substantive litigation of those claims in federal court, *see Mot. to Remand 4–7*, ECF No. 28. *See*
 4 *also, e.g., M.H.*, 2022 WL 1516560, at *3 (remanding case in similar circumstance); *Carias*, 2008
 5 WL 618917, at *2 (same).

6 Against this clear precedent, Defendants make two equally baffling arguments. First, they
 7 argue that the Amended Complaint “continues to plead federal-law claims,” Opp’n 7, but it is plain
 8 from the face of the Amended Complaint that no federal claims remain in the case. *See Am. Compl.*
 9 ¶¶ 12, 89–90, ECF No. 27. Plaintiffs’ counsel have emphasized this point repeatedly. *See*
 10 *Gonzalez Decl.* ¶ 8; *DeVeaux Decl.* ¶ 4 (explaining that Plaintiffs also do not intend to file a new
 11 suit to raise federal claims separately), ¶ 6 (“[W]e’ve already dropped the [federal] claims and
 12 have told you that we have no intention of refiling them.”). Defendants’ position thus requires the
 13 Court to ignore the text of the Amended Complaint, including the absence of any statutory religious
 14 claims whatsoever, and Defendants’ own declaration, which makes clear that there are no live
 15 federal claims in this case.

16 Next, Defendants argue that this Court should retain jurisdiction over Plaintiffs’ state
 17 constitutional claims because the analysis of California’s constitutional provisions may be
 18 informed by federal constitutional analysis, *see Opp’n 9*, but this argument fails for two reasons.
 19 First, the relevance of federal precedent to state claims has never been a basis to retain federal
 20 jurisdiction over purely state-law claims. *See, e.g., Pub. Sch. Tchrs. ’ Pension & Ret. Fund of Chi.*
 21 *v. Guthart*, No. 5:14-CV-01384 EJD, 2014 WL 2891563, at *3 (N.D. Cal. June 25, 2014) (rejecting
 22 the argument that retention of jurisdiction is necessary even where “federal law is infused
 23 throughout the [c]omplaint”). Second, California’s Supreme Court has made clear that the State
 24 constitution’s free speech and privacy guarantees are distinct from—and broader than—their
 25 federal analogs. California’s free speech provision is “more definitive and inclusive than the First
 26 Amendment,” *Golden Gateway Ctr. v. Golden Gateway Tenants Ass’n*, 29 P.3d 797, 801 (Cal.
 27 2001) (quoting *Wilson v. Superior Court*, 532 P.2d 116, 120 (Cal. 1975)), as is the state privacy
 28 provision, because “the California Constitution is, and always has been, a document of

1 independent force.” *People v. Brisendine*, 531 P.2d 1099, 1110, 1113 (Cal. 1975), *superseded on*
 2 *other grounds by state constitutional amendment*, Cal. Const. art. I, § 28(f)(2). Therefore,
 3 California’s courts are best positioned to resolve Plaintiffs’ state constitutional claims
 4 authoritatively.

5 Defendants’ argument is radical in its implications. If state constitutional claims
 6 necessarily imply federal-law claims whenever there are federal constitutional analogs, *see Opp’n*
 7 7–8, then *every* such state claim could be removed to federal court. And if the mere possibility that
 8 federal precedent could inform state constitutional law requires federal courts to retain jurisdiction
 9 over those claims, state courts might never have an opportunity to breathe independent life into
 10 their state constitutional provisions. This cannot be the case.

11 Defendants also dispute the viability of Plaintiffs’ claims, *Opp’n* 9–11, but these arguments
 12 are misplaced, as it is for California courts to decide what level of scrutiny applies to Plaintiffs’
 13 state constitutional claims and how the claims would fare under the correct standard. Indeed,
 14 Defendants’ lengthy discussion of Ninth Circuit precedent on federal law, *see Opp’n* 9–10, only
 15 underscores that *state constitutional protections* remain an open question under California law.
 16 The same is true of Defendants’ arguments about Penal Code § 2600, a California statute that
 17 provides a protective standard for statutory and constitutional rights of incarcerated people, but
 18 does not—and cannot—definitively interpret the state constitution’s independent guarantee of
 19 rights.¹ It is precisely because these questions are unsettled that remand is important here, as it
 20 would allow a California court to address the scope of the California constitution’s search and
 21 seizure and free expression clauses.

22 **B. Plaintiffs were not required to dismiss their federal claims with prejudice.**

23 Defendants attempt to make a mountain out of a molehill by arguing that Plaintiffs were
 24 required to stipulate to dismissal of their federal claims with prejudice. *Opp’n* 5–7. This is not true.
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 26

27 ¹ Existing precedent is not to the contrary: neither *In re Qawi*, 81 P.3d 224 (Cal. 2004), nor
 28 *Thompson v. Dep’t of Corr.*, 18 P.3d 1198 (Cal. 2001), defines the standard of review for Plaintiffs’
 state constitutional claims.

1 Plaintiffs' actions are routine in this District, and neither the text of § 1367(c) nor the existing
 2 caselaw appears to contemplate such a requirement.

3 None of the cases on which Defendants rely, Opp'n 5–7, suggests that dismissal with
 4 prejudice is necessary or even an important factor to consider in the Court's remand analysis. The
 5 cases cited by Defendants do not analyze whether dismissal with prejudice is required. *See, e.g.*,
 6 *Ricks v. Voong*, No. 18-CV-01069-JD, 2018 WL 3068305, at *2 (N.D. Cal. June 21, 2018) (stating
 7 dismissal with prejudice would be required without further explanation). In any event, the cases
 8 arise from different factual scenarios that may have made dismissal with prejudice appropriate as
 9 a discretionary matter in those circumstances. *See, e.g.*, *Ricks*, 2018 WL 3068305 (plaintiff sought
 10 remand without first amending the complaint to remove federal claims); *Renewable Creative v.*
 11 *Lake Las Vegas Destination Mktg. Council*, No. 2:11-CV-01974-KJD-CWH, 2012 WL 1432414,
 12 at *1 (D. Nev. Apr. 25, 2012) (same); *Gray v. H.K. Porter Co., Inc.*, No. C-93-3645-VRW, 1994
 13 WL 443693, at *1 (N.D. Cal. Aug. 8, 1994) (plaintiff himself proposed dismissal of federal claims
 14 with prejudice).

15 Defendants thus offer no more than an ill-defined concern that Plaintiffs will attempt to file
 16 further amendments raising the same federal claims, despite the fact that Plaintiffs have omitted
 17 those claims from the Amended Complaint and have explicitly and repeatedly committed to not
 18 raising them again in this case. *See* Am. Compl. ¶¶ 12, 89–90; Gonzalez Decl. ¶¶ 6–8; DeVeaux
 19 Decl. ¶¶ 4, 6. Even if Defendants' concerns were not misplaced, they would have ample recourse:
 20 they could oppose a subsequent motion to amend or remove the case again. As another California
 21 district court observed, “nothing would prevent Defendants from once again removing the action
 22 to federal court. The Court does not perceive a threat of gamesmanship in such a scenario, as
 23 Plaintiff would gain nothing from such a stratagem.” *Vaca v. The Vons Cos., Inc.*, CV-15-6635-
 24 MWF-AGR, 2015 WL 7722345, at *4 (C.D. Cal. Nov. 30, 2015).

25 For these reasons, it is routine for courts to remand without requiring Plaintiffs to dismiss
 26 voluntarily removed federal claims with prejudice. *See, e.g.*, *Beverly*, 2021 WL 4507476;
 27 *Rodriguez v. Emeritus Corp.*, No. 2:18-cv-00341-KJM-CKD, 2018 WL 4214922 (E.D. Cal. Sept.
 28 5, 2018); *Cabrera v. City of L.A.*, No. CV 17-3606 PA (KSx), 2017 WL 11632941 (C.D. Cal. June

1 7, 2017); *Kisaka*, 2017 WL 1960636; *Blue v. Cal. Off. of the Inspector Gen.*, No. 2:15-cv-02656-
2 KJM-CKD, 2016 WL 1138145 (E.D. Cal. Mar. 23, 2016); *Vaca*, 2015 WL 7722345; *1488*
3 *Bayshore, LLC v. City of E. Palo Alto*, No. C09-2017 THE, 2009 WL 1764573, (N.D. Cal. June
4 19, 2009; *E. Bay Drivers Ass'n v. Kaur*, No. C03-1241 SI, 2003 WL 21439216 (N.D. Cal. June 9,
5 2003). This Court should do the same.

6 **III. CONCLUSION**

7 For the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion
8 to remand.

9
10 DATED: June 14, 2023

Respectfully submitted,

11 /s/ Cara Gagliano

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27 ***Application for Admission Pro Hac Vice*
Forthcoming